IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

..

:: JUDGMENT ::

SARJEET SINGH & ORS. Vs. UNION OF INDIA & ORS.

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.100/1992.

Date of Order :: 17th July 2006.

PRESENT

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE DINESH MAHESHWARI

Shri R.S. Saluja, for the appellants.
Shri O.P. Rathi, Deputy Government Advocate.

BY THE COURT: (Per Hon'ble Maheshwari, J.)

The appellants Sarjeet Singh and others, stating themselves as legal representatives of the petitioner late Shri Kartar Singh, have preferred this intra-court appeal against the order dated 22.01.1992 passed by the learned Single Judge in S.B. Civil Writ Petition No.153/1981 with the submissions that while the writ petition was pending, the petitioner Shri Kartar Singh had expired; that the appellants hardly knew about the requirement for them to make an application for being substituted as petitioners in place of

late Shri Kartar Singh and hence they could not get themselves made a party to the writ petition; however, according to the appellants, that does not matter so far the writ proceedings are concerned and they are now required to prefer this appeal as legal representatives of the petitioner.

The dispute relates to an agricultural land measuring 25 bighas comprised in Murabba No.30 situated at Chak 38 PS Tehsil Raisinghnagar (hereinafter referred to as 'the land in dispute'/'the disputed land') that was allotted to one Shri Narain Singh as a displaced person against his verified claim in lieu of the immovable property left in erstwhile West Pakistan at the time of partition. The petitioner Shri Kartar Singh averred in the writ petition that Shri Narain Singh, in satisfaction of his verified claim for allotment of 25 bighas of land, was allotted some land in village Khakhawali, Tehsil Fazilka, District Firozpur in the State of Punjab. However, without disclosing the fact of such allotment in village Khakhawali, Shri Narain Singh secured allotment of 25 bighas of land in Murabba No.30 at Chak 38 PS, i.e., the land in dispute. According to the petitioner, the respondents Shri Anokh Singh and Shri Bahal Singh, sons of Shri Narain Singh, simultaneously got allotted 25 bighas of land each in Murabba Nos. 20 and 29 in the same village although they did not have to their credit any verified claim so as to entitle them to allotment of land as displaced persons

and they were members of Joint Hindu Family headed by Shri Narain Singh. The petitioner further averred that the allotments aforesaid were made before the Displaced Persons (Compensation & Rehabilitation) Act, 1954 came into force; that an Officer on Special Duty (OSD), said to be possessing the powers of Settlement Commissioner, made inquiries in respect of the allotments in Sriganganagar District as per the provisions of Rule 62 of the Displaced Persons (Compensation & Rehabilitation) Rules, 1955; that when it was found that Shri Narain Singh and his wife both had expired and the allotment of land in favour of Shri Narain Singh was not in order, the OSD passed an order on 25.03.1954 (Annexure-1) cancelling such allotment; that simultaneously the OSD made an order that the allotment of land comprised in Murabba Nos. 20 and 29 in favour of Shri Anokh Singh and Shri Bahal Singh would be continued only in case the allotment made in the name of Shri Narain Singh in village Khakhawali (Punjab) be got cancelled; that the sons of Shri Narain Singh got cancelled the said allotment in Punjab and produced the copy of cancellation order on 16.01.1960 and thereupon their allotment of Murabba Nos. 20 and 29 was confirmed (Annexure-2), but being in excess of their entitlement, on payment of additional amount of Rs.2048.83 by Shri Anokh Singh and Rs. 2054.88 by Shri Bahal Singh.

The petitioner alleged that the land in dispute comprised in Murabba No.30 having become available for allotment, was allotted to him against his verified claim of about 75 bighas of irrigated land; and as he was entitled to much more than 25 bighas, he was separately allotted land in Chak 8 C Badi, Ganganagar and the residue claim yet remained outstanding. According to the petitioner, after allotment, he made an application for delivery of possession of the land in dispute and thereupon an order was made by the Settlement Officer, Sriganganagar on 12.04.1955 (Annexure-2A) directing delivery of possession to him. The petitioner had thereafter taken the averment that per mistake he failed to file a compensation application and, therefore, was called upon to pay penalty of Rs.15,180/- being twice the price of land that he deposited by challan dated 26.03.1980 (Annexure-3). The petitioner asserted with reference to an extract copy of the Basic Register No.7A (Annexure- 3A) that a sale deed was duly executed on 24.04.1980 under Sanad No.363; and further alleged that being short of funds, he sold 12½ bighas of the disputed land to one Mrs.Vijendra Singh by registered sale deed; and as per the stipulation of sale deed, in the event of the order impugned being not quashed, he would have to pay back the amount received from the said purchaser.

The petitioner submitted that the cancellation order dated 25.03.1954 was belatedly challenged by Shri Anokh Singh and

Bahal Singh, sons of Shri Narain Singh, by way of an appeal before the Authorised Settlement Commissioner with an application under Section 5 Limitation Act but without joining the petitioner as a party and without disclosing complete facts; the appeal was accepted on 31.07.1978 (Annexure-3D), the order dated 25.03.1954 was quashed and the matter was remanded to the Managing Officer. After remand, the petitioner made an application and was joined as a party to the proceedings; of course, the order dated 31.07.1978 was not put to challenge. The Managing Officer by the order dated 16.07.1980 (Annexure-4) found the order of cancellation dated 25.03.1954 to be wholly illegal and also observed against the entitlement of the petitioner for allotment of land and, accordingly, proceeded to maintain the allotment of Shri Narain Singh and cancelled the allotment of petitioner Shri Kartar Singh. Aggrieved, the petitioner Shri Kartar Singh took the matter in revision; however, the revision petition filed by the petitioner was rejected by the Authorised Chief Settlement Commissioner on 16.12.1980 (Annexure-5).

Assailing the orders aforesaid dated 31.07.1978 (Annexure-3D), 16.07.1980 (Annexure-4) and 16.12.1980 (Annexure-5), the petitioner Shri Kartar Singh preferred the aforesaid Writ Petition No.153/1981 that was heard and dismissed by the learned Single Judge by the impugned order dated 22.01.1992.

Before the learned Single Judge, it was contended on behalf of the petitioner that the order dated 31.07.1978 was bad in

law because the allotment in favour of Shri Narain Singh was cancelled on 25.03.1954 and the same land was thereafter allotted to the petitioner and, therefore, he should have been heard but no notice was served upon him and, therefore, the order dated 31.07.1978 suffered from breach of principles of natural justice and should be set aside and all proceedings taken in pursuance thereof should be annulled. The learned Single Judge found that the argument, though attractive, could not be sustained. Learned Single Judge observed that while passing the order dated 31.07.1978, the Authorised Settlement Commissioner found that no notice was served upon the heirs of deceased Shri Narain Singh before making an order of cancellation of allotment of Shri Narain Singh; and it had been found that Shri Anokh Singh and Shri Bahal Singh, sons of Shri Narain Singh, were in possession of the land in dispute. Learned Single Judge further observed that if the petitioner felt aggrieved against the order dated 31.07.1978, he should have filed appeal or revision but the petitioner did not challenge the said order and, therefore, the finding recorded in the order dated 31.07.1978 remain intact. Learned Judge was of opinion that once the allotment in favour of Shri Narain Singh remains intact, the land could not be allotted to the petitioner and as such his allotment was rightly cancelled; and so far condonation of delay was concerned, this Court would not interfere, there being no sufficient justification for the same. Learned Single

Judge further found from the orders passed by the authorities below that the allotment in favour of the petitioner was bad for various reasons including the fact that he had already been allotted land at Chack 8C, Sriganganagar. An attempt was made before the learned Single Judge to raise the question that the land in dispute had been placed in compensation pool and was, therefore, not free for allotment. However, it was found that such argument was not raised before any of the authorities below nor any factual foundation was laid in the writ petition and that being essentially a question of fact and sufficient material being not before the Court, such argument was devoid of merit and in the aforesaid view of the matter, the writ petition was dismissed. Hence this appeal.

It has been submitted on behalf of the appellants that Shri Narain Singh and his sons formed one family with Shri Narain Singh being its head and he had a verified claim of 25 bighas of land only; that he obtained double allotment and his sons obtained yet further allotment of 25 bighas each; and in the overall scenario, the OSD rightly cancelled the allotment of Shri Narain Singh and maintained the allotment in favour of Shri Anokh Singh and Shri Bahal Singh only after they got the allotment in Punjab cancelled. There was only one verified claim of Shri Narain Singh and he or his successors-in-interest could have got allotment of land to the extent of the verified claim and as his sons Shri Anokh Singh and Shri

Bahal Singh got allotment of land in Murabba Nos. 20 and 29 against the verified claim, they could not avail of the allotment of land in Murabba No. 30. Learned counsel submitted that in any case so far the petitioner is concerned, he had already been allotted the land in dispute against his verified claim after Shri Narain Singh's allotment was cancelled and the learned authorities below proceeded on irrelevant considerations with reference to the allotment of some land in Chak 8 C Badi without considering that the petitioner had a verified claim of 75 bighas of land and the allotment to the extent of his entitlement was never made and allotment of 25 bighas of the land in dispute was not in excess of his entitlement. Learned counsel submitted that the order dated 31.07.1978 having been passed without hearing the petitioner, cannot be operated against his interest and the petitioner was entitled to challenge the same while challenging the orders passed in consequence thereof.

Having given our thoughtful consideration to the submissions and having scanned through the entire record, we are clearly of opinion that this special appeal remains fundamentally bereft of substance and deserves to be dismissed.

The fact that Shri Narain Singh had a verified claim of 25 bighas is not in dispute. The said Shri Narain Singh has been shown to be 70 years of age in the entry in Basic Register No.7A (Annexure-1). Allotment of Shri Anokh Singh has not been

produced on record but the entry in respect of Shri Bahal Singh in Basic Register No.7B (Annexure-2) shows his age at 50 years having four children. The basic fact that Shri Anokh Singh and Shri Bahal Singh were only a part of joint family of Shri Narain Singh and had no independent claim is not substantiated on record. Then, by the order dated 25.03.1954 the allotment of Shri Narain Singh was cancelled only with reference to the fact that Shri Narain Singh and his wife were dead and sons were holding separate allotment. The said order dated 25.03.1954 as made in the Basic Register No.7A (Annexure-1) reads thus:

> "Husband & wife both dead. Sons holding separate allotment.
> Allotment cancelled."

The aforesaid order was made on 25.03.1954. Though it has been sought to be asserted that it was made by an Officer on Special Duty while making inquiries under Rule 62 of the Rules of 1955, however, the said Rules were made only by the Notification dated 21.05.1955. Be that as it may, the fact remains that it has not been the basis of the order dated 25.03.1954 for cancellation of allotment of Shri Narain Singh that his sons were not having separate claim. Merely because his sons held other allotment, it cannot be assumed that for this reason alone Shri Narain Singh's allotment was liable to be cancelled. For the sake of arguments, if the contention of the petitioner be taken into consideration that only Shri Narain Singh

had a verified claim and his sons were otherwise not entitled for independent allotment and yet such allotments were found by the learned OSD on 25.03.1954; and for that reason some cancellation was to be ordered; in that case, cancellation would have been of the allotment of the sons and not of the father. It is not the case of the petitioner that the sons of Shri Narain Singh stated any such option to retain allotment of Murabba Nos. 20 and 29 and to give up the allotment made in favour of their father. Thus, it is obvious that even the foundation of the case of the petitioner based on surmise that there was only one verified claim of Narain Singh turns out to be illogical and does not lend support to the spineless order dated 25.03.1954.

In support of assertions that the sons of Shri Narain Singh got cancelled the allotment in Punjab and produced the copy of cancellation order on 16.01.1960 and thereupon their allotment of Murabba Nos. 20 and 29 was confirmed, the petitioner has produced extract copy of the Basic Register No.7B as Annexure-2, that relates to the land of Murabba No.29 allotted to Shri Bahal Singh son of Shri Narain Singh; and the order dated 16.01.1960 reads thus:

> "Confirmed. His allotment in Pujnab was cancelled.
>
> He had produced cancellation order."

It is only in relation to the allotment of Shri Bahal Singh that the fact of double allotment has been stated and then his allotment

has been maintained in the year 1960 after production of the copy of cancellation order of Punjab allotment. It is difficult to appreciate the submission that the said order made on 16.01.1960 be read for the purpose of providing justification for passing of the order for cancellation of allotment of Shri Narain Singh on 25.03.1954.

In any case, the allotment of Murabba Nos.20 and 29 to Shri Anokh Singh and Shri Bahal Singh, made and maintained for whatever reason, could not divest them of their right of succession to the property of Shri Narain Singh and merely because Shri Narain Singh and his wife were dead and their sons were having separate allotment, the allotment of the land in dispute to Shri Narain Singh could not have been cancelled. This is apart from the fact that the said cancellation order dated 25.03.1954 was sought to be brought about without serving of notice on the sons of Shri Narain Singh. Viewed from any angle, the order dated 25.03.1954 could not have been sustained.

The petitioner raised the grievance of passing of the order dated 31.07.1978 without notice to him although prior to it, the land in dispute had already been allotted to him. The grievance is not well founded and the entitlement of the petitioner to this or any other allotment is itself under thick clouds of suspicion because admittedly the petitioner did not make the requisite compensation application.

The learned Managing Officer has meticulously examined the entire matter while passing the order dated 16.07.1980 (Annexure-4) and has recorded categorical findings against the petitioner that remain unexceptionable. The learned Managing Officer extended opportunity to both the parties to lead their evidence and thereafter dealt with and analysed the entire material on record and has spelt out five specific reasons for disbelieving the statement of the petitioner Shri Kartar Singh as made on 24.06.1980. It has, inter alia, been pointed out that on one hand he had stated that one Murabba land was allotted to him in Chak 4 NN in Tehsil Padampur but its possession was not handed over to him and in lieu thereof, the land in dispute was allotted; but, squarely converse to this assertion, he had asked for allotment in Padampur Tehsil on the ground that the land in Chak 38 PS (disputed land) was not delivered in possession. It has also been noticed that initially he admitted that while obtaining allotment at Chak 38 PS and at Chak 4 NN, he did not disclose another allotment at Chak 8 C Badi, Tehsil Ganganagar but then denied that he obtained allotment at Chak 38 PS while concealing the allotment at Chak 8 C Badi. He had also denied the sale deed in favour of the wife of Shri Vijendra Singh though Shri Vijendra Singh himself admitted this fact. It has also been found that the petitioner was unable to establish having ever been put in possession of the land in dispute. Baselessness of the case of the

petitioner has been highlighted by the learned Managing Officer in paragraph 9 of the order dated 16.07.1980 (Annexure-4) with the following findings:

> "अप्रार्थी के मुख्तयार की यह दलील बड़ी लचर और न मानने योग्य है कि अप्रार्थी को उसके 31 स्टे. एकड़ 10 ¼ यूनिट के क्लेम के आधार पर चक 8 सी बड़ी में भूमि आवटंन के अतिरिक्त चक 38 पी एस में भूमि का आवटंन हुआ था और अप्रार्थी अपने क्लेम के आधार पर इस आवटंन का पूरी तरह अधिकारी है, क्योंकि वास्तविकता तो यह है कि अपने क्लेम के आधार अप्रार्थी एक भी बिस्वा भूमि के आवटंन का अधिकारी नहीं है क्योंकि उसने नियमानुसार क्लेम के मुआवजे का प्रार्थना पत्र Compensation Application form (C.A.F.) ही नहीं भरा । फिर भी उसे जब चक 8 सी बड़ी में भूमि का आवटंन हो चुका था तब तो वह किसी भी दृष्टि से 38 पी एस में भूमि आवंटित कराने का अधिकारी नहीं था ।"

The fact that the petitioner was never put in possession of the land in dispute is amply highlighted by the document dated 12.04.1955 (Annexure-2A) sought to be relied upon by the petitioner. The Settlement Officer stated in the said communication to the Tehsildar, Raisinghnagar that the petitioner was complaining of having not been delivered the possession on the ground of some stay order obtained by the old allottee; that there was no such stay order and, therefore, possession of the land may be delivered to the new allottee (the petitioner) and if there be any stay order, copy thereof may be sent for further action. A part of the land has

definitely been shown to be in possession of the sons of Shri Narain Singh and they have alleged to put Shri Vijendra Singh in permissive possession for cultivation on 12.10 bighas of land who had attempted to get a sale deed from the petitioner Shri Kartar Singh.

It may be pointed out at this juncture that the petitioner alleged in the writ petition that he made deposit towards the cost of land and interest on 26.03.1980 (vide Annexure 3); and that a sale deed was duly executed on 24.04.1980 under Sanad No.363 but Sanad was not issued because of the proceedings in question. However, the fact remains the amount was deposited by the petitioner on 26.03.1980; and the order was made in the Basic Register on 24.04.1980, much after passing of the aforesaid order dated 31.07.1978 and only during pendency of the proceedings before the Managing Officer. The learned Managing Officer has pointed out that Sanad was prepared for the mistake of the office, and was withheld upon noticing those pending proceedings. It is apparent that by making the deposit on 26.03.1980 the petitioner only wanted to over-reach and such attempt has rightly been curbed against. No rights were created by making of such deposit or by preparation of Sanad.

We have also noticed the averment taken in the writ petition that the petitioner sold 12½ bighas of land to Mrs. Vijendra Singh by registered sale deed and as per stipulation in the sale deed, he shall

be required to pay the amount back if impugned order would not be set aside. Without commenting on validity of such agreement, and so also the intention behind such deal, we wish to point out that the petitioner had denied such sale deed before the Managing Officer.

Having noticed such dealings and shortcomings in the conduct of the petitioner and having examined the record of the case, we are satisfied that the allotment of Shri Narain Singh was erroneously cancelled; purported allotment of the land in dispute to the petitioner was not valid; and the land continued in possession of the sons of Shri Narain Singh. These findings, concurrently made by the Settlement Authorities and affirmed by the learned Single Judge do not warrant any interference; and rather have our total approval.

We have noticed that the case of the petitioner Shri Kartar Singh on merits had been fundamentally fallacious. We further find serious flaws on the competence of the claim sought to be made by and on behalf of late Shri Kartar Singh. In the affidavit sworn before this Court on 05.01.1981, the petitioner Shri Kartar Singh has given out his age as 45 years that takes his age at about 18 years in the year 1954. It remains seriously in doubt if he was at all entitled to make an independent claim of allotment of land under the Act of 1954; and his having not made the application for compensation claim is not without significance. Further, he had been shown as the resident of Chak 29 BB Tehsil Padampur in the

letter dated 12.04.1955; he had already got allotment of land in Chak 8 C Badi Tehsil Ganganagar; he had also obtained allotment in Chak 4 NN Tehsil Padampur; and asserted his right over the disputed land in Chack 38 PS. The learned authorities below cannot be said to be in error in rejecting the case of the petitioner and the suggestion as made before this Court that he had been left high and dry, does not appear to be correct. The writ petition has rightly been dismissed.

Apart from the aforesaid, we cannot help commenting that this appeal remains fundamentally incompetent. The petitioner Shri Kartar Singh had admittedly expired during the pendency of the writ petition and no substitution in place of the deceased petitioner was prayed for. In this appeal also no application for substitution has been made and on the contrary, a cryptic ground has been stated that reads thus:

> "While the writ petition was still pending Shri Kartar Singh, predecessor-in-title of the appellants who was petitioner in the writ petition had expired. The appellant hardly knew that on the demise of Shri Kartar Singh they are required to make an application for being substituted as Appellants (Petitioners) in place of late Shri Kartar Singh and for that reason they could not get themselves made a party to the writ petition. That however does not matter so far as writ proceedings are concerned. They are now constrained to prefer this appeal as Legal Representatives of late Shri Kartar Singh."

We are of the opinion that an appeal, even if an intra-court appeal in a writ matter, cannot be maintained by the legal representatives of the deceased petitioner when no such substitution had been made in the original writ proceedings; and such appeal could least be held competent at the instance of the alleged legal representatives without even a prayer for substitution.

As a result of the aforesaid, both on merits and on competence this appeal fails.

The appeal is, therefore, dismissed. However, in the circumstances of the case, there shall be no order as to costs.

(DINESH MAHESHWARI), J. (S.N. JHA), C.J.

Mohan/